

This letter discusses Internet services and the Illinois Telecommunications Excise Tax Act. See 35 ILCS 630/3 and 4. (This is a GIL.)

August 23, 2006

Dear Xxxxx:

This letter is in response to your letter dated February 14, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

CORPORATION respectfully requests the Illinois Department of Revenue ('IDOR') to issue a letter ruling ('Ruling Request') that addresses the questions below regarding the application of Illinois Telecommunications Excise Tax to the facts set forth below. CORPORATION would appreciate a written response to this Ruling Request at the earliest possible date. Please note that at [sic] on this same date, CORPORATION has also requested a ruling regarding the application of the Illinois Sales and/or Use Tax on the services listed below.

BACKGROUND

CORPORATION, a STATE corporation, recently acquired certain assets of COMPANY. Under CORPORATION's organization, COMPANY's business activity is to provide computer services to the global PRODUCT industry. These services allow the manufacturers ('MFR'), and their suppliers, collectively referred to as Trading Partners, to interact and communicate through electronic means.

All Trading Partners complete a Member Application Form which indicates that they agree to the Exchange Rules which detail, among other things, access availability for each User ID and COMPANY's Role in the Operation of the Exchange. The Exchange is defined as the software to facilitate the transmission of data between trading partners. Depending on the type of application, the Client enters into a Product and/or Service

Agreement ('Agreement') with COMPANY. It is important to note that COMPANY is not a part or an agent of any Trading Partner in the transactions conducted via the Exchange; they merely provide the infrastructure to allow the various users to communicate and transact business with each other. All fees and services to be provided under the Agreement are set forth in the Customer Service and Fees Schedule ('Schedule'). Additionally, depending on the Agreement, a description of project scope, schedule, responsibilities of the parties and terms specific to the professional services required for the development, implementation effort and operation will be contained in the Statement of Work ('SOW').

COMPANY owns and/or leases computer equipment in STATE and Illinois. Any exchange of data between the Trading Partners occurs through the production server in Illinois. All Server equipment located in STATE is used for testing and disaster recovery purposes only.

FACTS:

COMPANY offers three distinct service applications to its Clients; COMPANY1, COMPANY-2 and COMPANY-3, and are described in detail below.

Depending on the application, the Client could be billed for any number of the services as detailed below. Specific questions for each are addressed with each application. Please explain if the service is subject to Illinois Telecommunication Excise Tax. Additionally, if it subject to Illinois Telecommunication Excise Tax, please indicate how the services should be sourced for the purposes of computing Telecommunications Excise Tax. Keep in mind that all of these services are provided via the Internet, therefore any user of these services can log into these service applications from anywhere in the world. Any required professional services are delivered in whatever market the customer desires based upon their location.

COMPANY1

COMPANY1, also known as TITLE, provides an online environment for a Trading Partner to securely connect, via the Internet, with their Suppliers to transfer data describing production problems as well as providing a structured problem solving methodology for the quick resolution of critical production issues.

For example, if the Trading Partner has a critical production problem ('nonconformance') with a supplier of goods to them, the Trading Partner logs into the TITLE online application ('PSA') via the Internet and enters all pertinent data for the nonconformance into the PSA. The data can be complemented by attaching photographs, or documents, which can aid in the Supplier's understanding of the problem. This information is contained in a file within the PSA called a Problem Case. A Problem Case may contain one or many occurrences of the nonconformance at any of the Trading Partner's locations and can relate to issues such as parts/materials, processes, shipping procedures, etc...Once the information is entered for the Problem Case, it is automatically assigned a specific Problem Case Number ('PCN') from the PSA. Once the PCN is established the Supplier is automatically notified via an email that a new Problem Case has been issued to them. Once notified, the Supplier logs into the PSA, via the Internet, to review the Problem Case and will respond to the Trading Partner via the PSA, to provide any necessary information on problem resolution. The Trading Partner can either approve or reject the response from the Supplier. If rejected,

the Supplier will respond with an alternative plan of resolution. This communication will continue back and forth between the Trading Partner and Supplier until resolution. Once the Trading Partner approves the resolution the Trading Partner closes the Problem Case. All communication between the Trading Partner and the Supplier is done via the PSA, which is maintained on COMPANY's server in Illinois. Once the Problem Case is closed, any further resolution, supply of parts, product quality improvement, etc...is done outside the PSA application, directly between the Trading Partner and their Supplier.

Both the Trading Partner and Supplier are charged an annual fee based on the number of users that are 'registered' to access & utilize the TITLE service regardless of whether any TITLE cases are assigned to their company. The annual fee allows for Help Desk Support, Storage / Disk Space on the COMPANY server in Illinois, data retention for a specified period of time, as well as unlimited TITLE communications during the year. The data is stored on COMPANY's server in Illinois, while any services required to facilitate the data retention are performed in STATE.

Under a separate pricing agreement and for an additional fee, the Trading Partner may subscribe to training and data replication services, which will be outlined in the SOW. The replication of data allows the Trading Partner access to all of its Problem Case data, allowing them to perform online analytical queries of the information contained in each Problem Case.

Question 1

- a. **Is the annual fee considered to be taxable under the Illinois Telecommunication Excise Tax statutes?**
- b. **If so, for taxing purposes, is the service sourced to the billing address of the MFR and/or Supplier or to the location of each individual registered user?**
- c. **If taxing is applied to each user location, what means of allocation would be required, considering that the physical location of the user is not known.**

COMPANY2

COMPANY2 is an on-line portal hosted by COMPANY, co-branded with the Subscriber, which is typically a large PRODUCT company. The Services are comprised of the one-time development and on-going hosting of a Portal for a specific Subscriber. The Portal includes a security integration that authorizes access by Trading Partners to (a) Proprietary Resources ('Resources') in accordance with permissions designated by the Subscriber and (b) Services in accordance with COMPANY membership. Resources can include any marketing, information resources, or software applications that are proprietary to Subscriber or its licensors.

Features of the Portal depend upon the specific Services as detailed on the Schedule and may include one or more of the following: User ID and password control, full security integration, electronic library repository, a publishing tool for sharing documents with a targeted audience and a personalized menu with links to the services that have been granted to the User.

Once a Subscriber contracts with COMPANY to host a Portal site ('Site'), COMPANY personnel in STATE design and build a Site with the specific content and layout as

required by the Subscriber. This is most easily described as web-site development. COMPANY hosts the web-site and applications of the Subscriber on their server in Illinois. The Site contains links to various Subscriber Resources. COMPANY also secures the Site, and provides security integration to various Subscriber Resources. The definition of the project scope, responsibilities of the parties and terms specific to the professional services required will be outlined in the SOW. The Subscriber is charged a one-time up-front fee for these services ('Implementation Fee').

Once the Portal is implemented, COMPANY will provide any updates to the Site for a specified period of time ('Period') at no additional cost to the Subscriber. After the Period expires, the Subscriber may elect to have COMPANY continue to maintain the Portal content for an additional monthly maintenance fee ('Maintenance Fee'). Alternatively, once the Period has expired, the Subscriber may elect to assume all responsibilities for maintaining and updating the Site contents themselves.

If the Subscriber does not elect to update the Portal themselves, after implementation, the Subscriber is charged a monthly fee for maintenance and hosting ('Maintenance') of the Site that is mandatory for the specified period of time when the Subscriber contracts for the Portal Service. Maintenance fees include the following services: (a) maintenance of the unique and non-unique Subscriber portal code base, (b) maintenance, testing and validation of the unique and non-unique Subscriber code to support upgrades to the core infrastructure products, (c) testing of all enhancements to ensure continued functionality and (d) 24x7 Help Desk support services; Help Desk services being the most costly of the four. Help Desk services are performed by a Third Party Vendor and their fees are built into the total Maintenance Fee to the Subscriber. Additionally, COMPANY will operate and maintain the portal as a hosted service in Illinois and is only responsible for the services hosted on their server. Depending on the fees set by the Schedule, the Subscriber will be charged for this service on a monthly basis, either by calculating a per User fee, a fixed monthly fee, or based on the number of Resources that COMPANY links, via the Portal, to the Subscriber's network ('Maintenance Fee').

For a User to gain access to the Subscriber's Resources, the User must request access, which can be approved or denied by the Subscriber. Once approved, the User gains access to the Subscriber's Resources through the Portal via specific links for each Resource. The Supplier is responsible for managing access at a User level. Each time a User logs into the Portal and gains access to a particular Subscriber's Resources, the COMPANY network sends an encrypted credential to the Subscriber's network, notifying them which User is accessing their system and which particular Resource they are viewing. Users may self-register via an online form, but must be approved by their administrator before obtaining access to any resources. Alternatively, COMPANY may contact a Subscriber's Users themselves, and actively encourage a Supplier to register to the Portal. There is a one-time fee charged to the Subscriber per Supplier registered as a result of this service.

In order to easily provide a User with access to the Resources, COMPANY provides Multi-Domain Sign On ('MDSO') capabilities, which allows the Users to access Subscriber's Resources using their COMPANY User ID & password, without needing a separate login ID from the Subscriber. In order to provide the MDSO capabilities, a one-time security integration is performed, using resources from COMPANY and the Subscriber ('MDSO fee').

Furthermore, COMPANY is offering Identity Management, which is similar to MDSO, but can be offered outside of the Portal umbrella. Instead of the User logging in on the COMPANY Portal to gain access to a Subscriber's Resources, the User will login on the Subscriber's Portal page, and will be 'linked' through the COMPANY network, to verify ID's, passwords, access, etc., and back to the Subscriber's Resource. Identity Management allows the Subscriber to control the content of their own Portal page; however, it also provides access to COMPANY's administrative tools, while COMPANY will maintain all ID management, access, password resets, etc. for the Users. The Subscriber will be charged a monthly fee for each user for this service ('Identity Management fee').

In addition to the services that must be provided, the Subscriber must have a backend security system ('Security') for COMPANY to integrate with. If the Subscriber does not have the necessary Security, COMPANY offers to resell the license of security software product X ('Software'). COMPANY licenses the Software from Vendor A and will resell the Software to the Subscriber. The Software can only be utilized by the Subscriber for user ID's related to the COMPANY product. The terms and conditions of the license are incorporated as part of the Agreement. The Software is drop shipped from Vendor A directly to the Subscriber. The software and ongoing maintenance fees charged by Vendor A to COMPANY may be recouped via a specific line item referenced above, or may be bundled into a larger package deal, if the Subscriber enters into a monthly fixed fee contract.

Question 1

- a. Is the monthly fee for this service considered to be taxable under Illinois Telecommunications Excise Tax statutes?**
- b. If so, for taxing purposes, is the service sourced to the billing address of the Trading Partner and/or Supplier or to the location of each individual registered user?**
- c. If taxing is applied to each user location, what means of allocation would be required, considering that the physical location of the user is not known.**

Question 2

Please indicate the taxability of the following services:

- a. Implementation fee – one time fee required to set up the Portal Site**
- b. Maintenance fee – monthly fee for maintenance and/or hosting of the Portal Site. This can be charged based on number of users, the number of Resources that are 'linked' to in a site, or on a fixed fee basis.**
- c. If the maintenance fee is taxable, and the Subscriber is invoiced based on the number of users, is the service sourced to the billing address of the Subscriber or to the location of each individual registered user? If taxing is applied to each user location, what means of allocation would be required, considering that the physical location of the user is not known.**
- d. MDSO fee – one time fee to set up Multi-Domain Sign On. If necessary, this fee includes the cost of the Software that COMPANY resells to the Subscriber.**
- e. Identity Management fee – monthly per user fee for verifying User access for a Subscriber's Portal site.**

Question 3:

Are any of the other services related to COMPANY2 considered to be taxable under Illinois taxing statutes?

COMPANY-3

COMPANY-3 is a data messaging service that provides a single collection for a company's computers to exchange data in various formats with the computers of its Trading Partners. Separately these are referred to as Supplier / Customer, together these companies are considered to be Trading Partners of the service. The COMPANY-3 product consists of two distinct components; COMPANY-3 ('Messaging') and Supplier Connection.

COMPANY-3:

For any number of reasons, Trading Partner A may wish to send an electronic message ('Message') to Trading Partner B. For example, Trading Partner A will require shipment of a specific product from Trading Partner B. Via the Messaging application, Trading Partner A's internal software triggers an electronic message to Trading Partner B to ship a specified number of Product X. The message travels from Trading Partner A's network via the Internet to COMPANY's server in Illinois.

If Trading Partner A's application environment is different than Trading Partner B's application environment, the file can be translated ('Mapped') into all EDI format document which will be readable by Trading Partner B's application environment. The translation of the message occurs on the COMPANY network in Illinois. Then, depending on the type of channel the Trading Partner has, (explained later in this section) the message can either remain on COMPANY's server with either Trading Partner being able to manually retrieve the message or the message can be electronically sent to the Trading Partner's server.

The transmission of each message is measured in kilocharacters, or by each 1,000 characters transmitted. Each message is transmitted entirely between the network of each Trading Partner, and messages can be tracked via communication code, which provides the address of the computer that transmits the message.

Based on the fees as set forth in the Schedule, the Trading Partners are charged a monthly fee based on the volume of kilocharacters sent and received during the billing period ('Kilocharacter fee').

Additionally the Trading Partner may be charged for the following fees in relation to Messaging:

Both Supplier and Customer are charged a one time set up fee for new customer/supplier relationships, which establishes the sending and receiving of Transactions and enables access to the COMPANY-3 Application Web Site and Messaging Hub, located on COMPANY's server in Illinois. The web site will show detail of the messages sent, received and trading partner community ('Set up fee').

The Suppliers and Customers are charged a monthly fee based upon the number of Trading Partners they have a relationship with. This service allows the Trading Partners

to configure, support and maintain Trading Partner locations and establish relationships with other Trading Partners. COMPANY will maintain and support the User established Trading Partner relationships ('Trading Partner Maintenance Fee').

If required, Mapping service is the analysis and development of code to convert the format of messages of the sender to fit the backend system of the recipient. This is a one time fee and is charged on a per map basis. The services related to this are described in the SOW ('Mapping fee').

Once the initial mapping is complete, there is an ongoing translation fee, which covers map maintenance to stay current with Trading Partner changes to their system and requirements. The fee applies to each message that has the translation applied to it. Translation occurs with each message sent and received and is included as part of the Kilocharacter Fee ('Translation Fee').

The Trading Partners are also charged a one-time fee for setting up an Integration Channel, which is the mechanism to send and receive Messages to and from its Trading Partners. The system supports two different types of Channels; either a Mailbox channel or a Persistent Channel. The Mailbox Channel is akin to a dial-up service, where the Trading Partner must establish a connection to the server and retrieve messages. The connection to the Channel goes away when you disconnect from the Server. The Persistent Channel is akin to cable connection, where it is always 'on' and messages can constantly be delivered to your internal network ('Mailbox fee').

In addition, the Trading Partners are also charged a monthly maintenance fee for the Mailbox. The charge to the customer is based on the number of kilocharacters processed via the Channel during the billing period ('Mailbox Maintenance fee').

Value Added Network ('VAN') Interconnect is a Transaction service that allows Users to send data files to Trading Partners and receive data files from Trading Partners that are not directly connected to COMPANY. COMPANY is charged a fee based on the volume of kilocharacters sent and received through another VAN provider's network if the trading partner is not connected to the COMPANY network. This charge is incremental to the transaction cost to the Trading Partner and is nothing more than the service transactions described above.

Alternatively, although most Trading Partners are charged separate fees for each service described above, kilocharacters, channels, mapping, maintenance, etc...a Trading Partner may contractually secure a monthly fixed price for all services described above.

A Trading Partner can select to pay for all or part of their other Trading Partner's fees (primarily their suppliers) to use the Messaging service. Alternatively, the Trading Partner will make all of their other Trading Partners aware that Messaging is available but will not subsidize the service for them. Therefore, the Trading Partner that chooses to subsidize the service for their other Trading Partner's may be remitting payment for Trading Partner's [sic] located all over the world.

Supplier Connection:

Supplier Connection is essentially the same service as COMPANY-3, however, instead of using internal software to compose & transmit the messages, the Trading Partner

utilizes a web browser to exchange data with other Trading Partners. Supplier Connection Customers are charged a one-time registration fee ('Registration Fee'), a fee for professional services to configure Supplier Connect to fit the Customer's needs ('Configuration Fee'), and a specified monthly fee based on the number of Users registered for the service ('User fee').

Question 1: Which of the fees referenced above are considered to be taxable in Illinois?

- a. **COMPANY-3 - Kilocharacter fee - measured volume of each message**
- b. **COMPANY-3 - One time user set up fee**
- c. **COMPANY-3 - Trading Partner Maintenance Fee - based on the number of Trading Partners.**
- d. **COMPANY-3 - One time Mapping Fee**
- e. **COMPANY-3 - Translation Fee**
- f. **COMPANY-3 - One time Mailbox Fee**
- g. **COMPANY-3 - Monthly Mailbox Maintenance fee - based on the volume of kilocharacters sent in a month**
- h. **Supplier Connection - Registration Fee**
- i. **Supplier Connection - Configuration Fee**
- j. **Supplier Connection - User Fee**

Question 2:

- a. **If any of these fees are considered to be taxable, regardless of whether the MFR subsidizes the service for their Trading Partners or not, for taxing purposes, is the service sourced to the billing address of the MFR and/or Supplier or to the location of each individual registered user?**
- b. **If taxing is applied to each user location, what means of allocation would be required, considering that the user may move during the year and/ or the physical location of the user is not known.**

Question 3:

Additionally, if any of these fees are considered to be taxable as a telecommunication service, how should COMPANY source the services for computing sales tax under the scenarios below? Please note that all transactions go through the COMPANY network in Illinois.

- a. **Trading Partners are in STATE and Illinois**
- b. **Both Trading Partners are in STATE**
- c. **Both Trading Partners are in Illinois**
- d. **Trading Partners are in Ohio and California**

Question 4:

- a. **If any of the fees referenced above are considered to be taxable, and the Trading Partner secures a monthly fixed fee for all of the services described above, does the IDOR consider the entire transaction to be taxable as a bundled transaction?**

- b. **Additionally, if the bundled transaction is considered to be taxable, what is the situs of the service?**
- c. **If the books and records of the company can support the taxable vs. non-taxable elements of the transaction, can the invoice be broken out by the taxable vs. non-taxable elements of the transaction?**

Auction Services

Prior to the acquisition of COMPANY by CORPORATION, COMPANY provided an Auction service to their Clients, which can be compared to the services performed on Ebay using auction software ('Software') provided by a specialized publisher ('Publisher'). The auction assets were sold to a third party ('Vendor') prior to the Acquisition. For a specified period of time, COMPANY will continue to use their licensed Publisher software to provide uninterrupted service to the Vendor's Clients until the Vendor's transition occurs. COMPANY charges a lump sum amount to the Vendor to provide this service, which includes Internet hosting for the Auction service as well as maintenance costs. Maintenance services are in respect of the COMPANY personnel dedicated to ensure that the application is running within the COMPANY infrastructure. The Publisher's application fees are paid directly by the Vendor. All of the Auction service is performed on COMPANY's server in Illinois and is accessible via the Internet.

Question 1:

Is the lump sum fee that COMPANY charges to the Vendor considered to be taxable in Illinois?

ANALYSIS

Illinois state law, 35 ILCS 630/3 and 630/4 'Imposition of tax on intrastate/interstate telecommunications' state that a tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate telecommunications by a person in this State...

Furthermore, ILCS 35 630/2 *Telecommunications Excise Tax Act* defines gross charge, telecommunications and service address as follows:

'Gross charge' means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money...' However, 'gross charges' shall not include charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content or charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges.

'Telecommunications', includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or

similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities.

The definition of 'telecommunications' shall not include value-added services in which computer-processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. 'Telecommunications' shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.

'Service address' means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

General Information Letter Ruling ST-98-0006-GIL, issued January 9, 1998, states that when a charge is made to customers for transmitting e-mail which is sent to them by those customers, as opposed to providing customers with e-mail capability (e.g., as part of a charge for internet access), they sell telecommunications. Flat rate charges that do not disaggregate non-telecommunications charges, such as for newsletters and print and mail services, from charges for telecommunications services, such as e-mail forwarding services, will be subject to Telecommunications Excise Tax on the full amount of the charges.

CONCLUSION:

It is unclear which, if any, of the services COMPANY provides are taxable under Illinois sales and use tax law. Please provide a written response for the specific questions under each service listed above.

If you have any questions relating to the information contained in this Ruling Request, please contact #.

DEPARTMENT'S RESPONSE:

Data Transfer Services

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. For additional information regarding telecommunications tax liabilities, please refer to 86 Ill. Adm. Code 495.100 et al. In addition, please refer to the Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1 and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1 et seq.

The Department is unable to determine from the information provided whether the annual fee referred to in your letter includes transmission and telephone line charges. Should your company charge its customers for transmission and telephone line charges, then the above-mentioned telecommunications taxes would apply. Charges for data processing and information retrieval are not taxable. See 86 Ill. Adm. Code 495.100(c). If retailers provide both transmission (such as telephone line charges) and data processing services, the charges for each must be separately stated and identified in the books and records of the retailers. If such charges are not separately stated in this manner, then all charges are taxable. See 86 Ill. Adm. Code 495.100(m). For information regarding the calculation of charges for that portion of the interstate inter-office telecommunications provided in Illinois see 86 Ill. Adm. Code 495.100(n)(3).

Web Hosting

In general, persons who design or host web pages are not considered to be telecommunications retailers. We understand that persons who design or host web pages generally do not, as part of their billing, charge customers for line or other transmission charges in relation to those web pages. As such, they are not acting as telecommunications retailers. However, if telecommunications retailers also provide these types of services and do not disaggregate the charges for those services from their telecommunications charges in their books and records, the entire amount of those charges would be subject to Telecommunications Excise Tax.

Set-Up Fees

You have inquired about various fees related to the web hosting services provided by your client. Please note that canned (prewritten) computer software is considered tangible personal property in Illinois. The one time implementation fee that is required for initial set-up may incur Service Occupation Tax or Use Tax. Service Occupation Tax liability is incurred when tangible personal property is transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. If no tangible personal property is transferred incident to a sale of service, no Service Occupation Tax liability is incurred.

Under the Service Occupation Tax Act, the purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. See 86 Ill. Adm. Code 140.101 through 140.109.

Maintenance Fees

The Service Occupation Tax Act provides that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3). If tangible personal property is not transferred incident to

performance of the maintenance service, then no Service Occupation Tax or Use Tax liability is incurred.

Software

The transfer of any canned computer software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability or Service Occupation Tax and Service Use Tax liability. Canned computer software transferred incident to sales of service may result in Service Occupation Tax or Use Tax liability depending upon the tax base of the serviceman. Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). For instance, the transfer or sale of canned software downloaded electronically would be a taxable transfer.

If the computer software consists of custom computer programs, then the sales of such software may not be taxable. See subsection (c) of 86 Ill. Adm. Code 130.1935.

If transactions for the licensing of either canned or custom computer software meet all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software nor the subsequent software updates will be subject to tax.

Telecommunications Sourcing

If you are providing telecommunications, both the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 et seq.) and the State's Telecommunications Excise Tax Act (35 ILCS 630/1 et seq.) provide sourcing rules for those taxes. For the sourcing of these taxes involving mobile phones, paging systems, and maritime systems please see the Mobile Telecommunications Sourcing Conformity Act (35 ILCS 638/1 et seq.).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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EEB:msk